

WAC 458-20-210 Sales of agricultural products by farmers.

(1) **Introduction.** This section explains the B&O and retail sales tax applications to sales of agricultural products by farmers. Farmers should refer to WAC 458-20-101 to determine whether they must obtain a tax registration endorsement or a temporary registration certificate with the department of revenue. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-122 (Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use);

(b) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers); or

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural products" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) **Business and occupation tax.** Farmers selling agricultural products which they have not produced upon their own land or upon land which they have a present right of possession are subject to the provisions of the business and occupation tax, whether these products are sold at wholesale or retail. The business and occupation (B&O) tax applies to all sales of nonagricultural products. The B&O tax also applies to sales by persons operating a stockyard, slaughter or packing house who sell animal products raised by them.

(a) **Wholesale sales.** Farmers making wholesale sales of agricultural products produced by them upon land owned by them,

or upon which they have a present right of possession, are not subject to the B&O tax. (See RCW 82.04.330.) However, this exemption does not apply to farmers who produce agricultural products for use in a manufacturing process, or who sell products at wholesale which they do not grow.

(b) **Retail sales.** Retail sales of agricultural products by farmers producing the same are subject to the retailing B&O tax.

Thus, tax is due by any farmer engaging in the following activities:

(i) Conducting a roadside stand or a stand displaying agricultural products for sale at retail;

(ii) Posting signs on the premises, or through other forms of advertising soliciting sales at retail;

(iii) Operating a regular delivery route from which agricultural products are sold at retail from door to door; or

(iv) Maintaining an established place of business for the purpose of making retail sales of agricultural products.

(c) **Specific B&O tax exemptions.** There are specific B&O tax exemptions provided by statute for certain sales of agricultural products which do not otherwise qualify for exemption under RCW 82.04.330. The B&O tax does not apply to the following:

(i) Amounts received for the sale of hatching eggs or poultry by farmers producing the same, when these products are for use in the production for sale of poultry or poultry products. RCW 82.04.410.

(ii) Amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, even though the hops have been processed into extract, pellets, or powder in this state. RCW 82.04.337. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

(4) **Retail sales tax.** Farmers required to obtain a tax registration endorsement must collect and remit retail sales tax upon any retail sale for which a specific retail sales tax exemption is not provided. Retail sales tax exemptions are available for the following sales of agricultural products:

(a) Sales of food products for human consumption. This exemption also applies to sales of livestock sold for personal consumption as food. RCW 82.08.0293.

(b) Sales of pollen. RCW 82.08.0277.

(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.

(d) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.

(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.

(f) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breeding association. RCW 82.08.0259. Sellers claiming such an exemption should refer to WAC 458-20-122 for a description of the exemption certificate which must be retained by the seller.

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is

required to pay the deferred sales or use tax directly to the department.

(6) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) BG Orchards produces apples at its own orchards. Most apples are sold at wholesale, but BG does operate a seasonal roadside fruit stand at which it sells apples at retail. The gross proceeds derived from the wholesale sale of apples is exempt from the business and occupation tax. However, the retailing B&O tax applies to the retail sales of apples, notwithstanding these sales qualify for the food product sales tax exemption.

(b) AC, Inc. owns and operates a hatchery which produces poultry from eggs. The resulting poultry is then sold to egg producers. AC, Inc. is making retail sales of poultry. However, the gross proceeds received from these sales are exempt from both the retailing B&O and retail sales taxes under the provisions of RCW 82.04.410 and 82.08.0267, respectively. [Statutory Authority: RCW 82.32.300. 94-07-048, ' 458-20-210, filed 3/10/94 effective 4/10/94; 86-21-085 (Order ET 86-18), ' 458-20-210, filed 10/17/86; 86-07-005 (Order ET 86-3), ' 458-20-210, filed 3/6/86; 83-08-026 (Order ET 83-1), ' 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. 78-07-045 (Order ET 78-4), ' 458-20-210, filed 6/27/78; Order ET 70-3, ' 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]